

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 12-cr-50 (CBA) (CLP)  
: :  
- versus - : U.S. Courthouse  
: Brooklyn, New York  
VINCENT BADALAMENTI, :  
Defendant : February 13, 2012  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR  
DETENTION HEARING  
BEFORE THE HONORABLE CHERYL L. POLLAK  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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1                   THE CLERK: Criminal Cause for Detention  
2 Hearing, case number 12-cr-50, United States v. Vincent  
3 Badalamenti.

4                   Counsel, please state your name for the record.

5                   MS. ARGENTIERI: Nicole Argentieri and Steven  
6 Frank.

7                   Good afternoon, Judge.

8                   THE COURT: Good afternoon.

9                   MR. FISCHETTI: Ronald Fischetti, representing  
10 the defendant, your Honor.

11                  THE COURT: Good afternoon.

12                  Mr. Badalamenti, I take it that you understand  
13 English.

14                  THE DEFENDANT: Yes.

15                  THE COURT: Okay. If at any point something is  
16 said that you don't understand, please let me know. All  
17 right?

18                  What are we here for today?

19                  MS. ARGENTIERI: Judge, the government had  
20 submitted a motion for detention based on the fact that  
21 we believe the defendant is both a danger to the  
22 community and a risk of flight. And when the defendant  
23 was arraigned on the indictment, I believe Mr. Fischetti  
24 had this put on to contest that because Judge Azrack at  
25 the initial appearance ordered him detained.

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1                   THE COURT: Okay. So --

2                   MS. ARGENTIERI: And I had sent the Court a  
3 copy of our detention memorandum.

4                   THE COURT: I have it. I have it. I just  
5 wasn't quite sure on whose motion we were here.

6                   MS. ARGENTIERI: It's the defense's motion.

7                   THE COURT: Okay.

8                   MR. FISCHETTI: Judge, just one small fact, my  
9 co-counsel, Mr. Franz tells me, as I recall Judge Azrack  
10 did not order him detained. What we did is we  
11 adjourned --

12                  THE COURT: A temporary order of detention.

13                  MR. FISCHETTI: Yes, I don't think it really  
14 makes --

15                  MS. ARGENTIERI: That's correct, Judge. I  
16 misspoke.

17                  MR. FISCHETTI: I really don't think it's any  
18 difference but she did not make a finding.

19                  THE COURT: Okay.

20                  MR. FISCHETTI: Your Honor, may I be heard with  
21 regard to that?

22                  THE COURT: Please.

23                  MR. FISCHETTI: Thank you, Judge. Some of this  
24 I know your Honor knows but let me say it for the  
25 purposes of the record. Your Honor, this is not a

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1 presumption case under Title 18 3142. It's not a  
2 controlled substance. It's not a substance under any of  
3 the other sections which means as I understand the law,  
4 that the government has to prove that he's a danger to  
5 the community by clear and convincing evidence. I think  
6 that's the standard and I don't believe that the  
7 government has come anywhere close to proving that and I  
8 would like to tell you why.

9                   As your Honor knows, there are a number of  
10 factors that your Honor has to consider before  
11 determining that by clear and convincing evidence and  
12 among them is the nature of the crime, violence. It's an  
13 extortion case but all extortion cases are violent by  
14 statute. There are those that really are violent where  
15 there are beatings and injuries to individuals.

16                   The charges in this case are basically two  
17 predicate acts that occurred quite some time ago in 1999  
18 and one recent one, Judge, which is within the statute of  
19 limitations.

20                   All those charges, the two predicate acts, the  
21 charges are that he loaned some individual \$50,000,  
22 supposedly with some interest to pay back others and also  
23 took over a bar. Those two actions, and I'll explain  
24 that a little further as we get into this argument, would  
25 be barred by the statute of limitations since it was over

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1 five years ago.

2           However, there is one charge within the five  
3 year statute of limitations and that is basically that he  
4 loaned an individual \$5,000 and attempted to collect  
5 \$1,500 having been paid \$3,500 by threats and violence.  
6 No violence, of course. No one was injured. But the  
7 important thing I think to note when we're talking about  
8 this, this is not extortions of shopkeepers or  
9 individuals who he loaned money to. These -- the one --  
10 both of these charges are people who are alleged by the  
11 government to be members of organized crime themselves.  
12 Both, of course, with records. Both, of course, I  
13 believe are in the program. One in particular, which  
14 from my read in newspaper accounts is going to be or was  
15 charged with murder over \$1,500.

16           So that's basically the charges in the case.  
17 Now, the government has said a number of things during  
18 its detention memo which I challenge, your Honor and I  
19 want to go into them.

20           Your Honor, Mr. Badalamenti was charged in a  
21 crime in -- 2002, was it?

22           THE DEFENDANT: Yes.

23           MR. FISCHETTI: -- in 2002. It was an  
24 extortion charge. In that particular charge, the  
25 government argued that he should be detained as they say

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1 now, the Court released him with a bracelet, a monitoring  
2 device from I believe 10 o'clock in the morning until 10  
3 o'clock in the evening and I'll explain why, your Honor.  
4 He has a number of businesses.

5 In that particular case, the government argued  
6 for the Court that the charges in the case he was facing  
7 twenty years in the case and for that reason, he was  
8 certainly a risk of flight and indeed, a danger to the  
9 community. I argued then, as I am now, that the very  
10 charges although they say that and there's a twenty-year  
11 statutory maximum that he could be sentenced to, were not  
12 charges that would incarcerate him or anything like that.

13 In any event, he was charged and his maximum  
14 sentence and the sentence that the government argued he  
15 could get was twenty years but he pled guilty to that  
16 case and he was sentenced to fifteen months on that  
17 charge.

18 This particular charge, as the government says  
19 in its submission to your Honor -- I want to get the page  
20 on this, if I can -- excuse me, Judge -- it states that  
21 he is facing on these charges 51 to 63 months. That's  
22 the government's estimate and usually, your Honor, in my  
23 experience, the government's estimate is higher than I  
24 would see in the guidelines. In the event Mr.  
25 Badalamenti pled, 51 months of course is after trial he'd

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1 be given three months -- three points for acceptance of  
2 responsibility and fifteen percent off; he'd actually be  
3 facing 32 months in jail.

4                   The government said before Judge Amon that this  
5 is a complex case and to keep him incarcerated, Judge,  
6 for possibly what could be twenty-five or thirty percent  
7 of a sentence, I suggest is just wrong and  
8 unconscionable.

9                   The evidence that we have in this case, Judge,  
10 which the government told Judge Amon, consists of over  
11 fifty consensual recordings, some of them as long as  
12 four, five or six hours. We have the list of those  
13 recordings of the fifty consensual recordings that the  
14 government says they have. They sent us the list of  
15 them. There is one recording of Mr. Badalamenti. I  
16 think that goes to the weight of this case.

17                   The other thing that concerns me about this  
18 case, Judge, and it really concerns me because it seems  
19 to me that the government when they allege that someone  
20 is a member, a high-ranking member of an organized crime  
21 family as he is alleged to be in the Bonanno crime  
22 family, doesn't really matter what the crime is that  
23 they're charging, the length of the crime when it really  
24 was supposed to have happened as a predicate act which is  
25 some twelve years ago, it seems like it's just a

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1 Talisman. They say he's a member of the Bonanno crime  
2 family and then he must be detained.

3 Now the detainer statute, your Honor, the  
4 pretrial detainer statute which I know and have railed  
5 against, list all the reasons why he should be detained  
6 and then at the bottom of it, Judge, it says as I recall,  
7 nothing in this act shall be used to diminish the  
8 presumption of innocence. However, Judge, it seems to me  
9 -- it seems to me, Judge, that when we get to situations  
10 like this and we just don't look at the nature of the  
11 crime, what he's done in the past and who he is, what  
12 family background he has, Judge, that we forget about  
13 that.

14 The two predicate acts, Judge, and this I  
15 consider extremely important, the two predicate acts that  
16 they're talking about occur it appears, sometime before  
17 September 2004, okay? That's the acts that form the  
18 predicate in this case.

19 Now those two acts, as I told you, as a  
20 predicate, is a \$50,000 loan --

21 THE COURT: I don't have a copy of the  
22 indictment. I'm sorry.

23 MS. ARGENTIERI: I can pass one up, Judge.

24 THE COURT: That would be helpful.

25 MS. ARGENTIERI: I apologize. It's small.

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1                   THE COURT: That's okay. I can still read it.

2                   MS. ARGENTIERI: Okay.

3                   THE COURT: Thank you.

4                   MR. FISCHETTI: Judge, I have a much larger  
5 copy.

6                   MS. ARGENTIERI: There's also a chart of the  
7 indictment on pages 5 and 6 of our detention memo.

8                   THE COURT: Okay. All right.

9                   Go ahead, Mr. Fischetti.

10                  MR. FISCHETTI: Judge, you'll see that these  
11 occurrences that they're claiming as the predicate acts  
12 which makes this a RICO indictment occurred in 1999 but  
13 what I think is important about that, Judge, because the  
14 government says in its submission that Mr. Badalamenti  
15 has continued his life of crime continually and indeed,  
16 as they said in their memo, when he was even released  
17 from prison in 2005.

18                  Now he was released in 2005, Judge, after  
19 serving his fifteen months and after that, he spent three  
20 years on supervised release until 2008 and, of course,  
21 during that time he was never arrested. And then from  
22 2008 until now, where we are now, he hasn't been arrested  
23 except for this crime. It seems to me that doesn't  
24 pretend to be someone who has been living in a life of  
25 crime with no arrest.

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1                   And with those two charges in 1999, this is  
2 what I think is extremely important, the individual who  
3 allegedly is the victim of these two crimes has testified  
4 in open court and the government acknowledges or must  
5 acknowledge that they knew about these crimes in 2004  
6 because there are 302s, there are proffer agreements,  
7 there's his testimony, which says clearly the crimes that  
8 they allege he committed; the \$5,000 loan, in which he  
9 loaned to somebody, the story is basically this was a  
10 Colombo associate and in dealing with this Colombo  
11 associate, he was attempting to get him, the Colombo  
12 associate, to join the Bonanno family, and then there was  
13 some dust-up where someone in the Colombo family says you  
14 can't do that and the \$50,000 that was loaned allegedly  
15 by Mr. Badalamenti to this individual was paid back.

16                   The other crime that they're alleging that  
17 happened in '99 was that he took over some bar with this  
18 individual and obviously, I guess the testimony is going  
19 to be that he kicked the owner out because he hadn't paid  
20 him some money.

21                   But, Judge, I think it's extremely important  
22 that the government knew about this in 2004 and didn't  
23 arrest him in 2005, 2006, even up to today and now they  
24 use these two predicate acts.

25                   Your Honor, I know the government can ask for

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1 pretrial detention on dangerousness and they can proceed  
2 by proffer which makes it extremely difficult, if not  
3 impossible, for a defense lawyer to challenge these  
4 accusations. I can't cross-examine this individual,  
5 although I have his statements as to why this happened,  
6 when it happened and we're talking about 1999 with the  
7 government having knowledge of it in 2004.

8           This particular crime that they're talking  
9 about, extortion, that occurs within the statute of  
10 limitations, the victim in this case -- alleged victim in  
11 this case -- has been portrayed in all the media, Judge,  
12 he was on a TV show and that he's charged basically among  
13 other things, with murder. And he's testifying or will  
14 testify according to what the government says as a John  
15 Doe, that he was loaned \$5,000 and paid \$3,500 back and  
16 for \$1,500 -- \$1,500, Judge, he's accused of having  
17 people, I guess, threaten this victim, this person who  
18 committed a murder to get the money back; \$1,500, Judge.

19           Mr. Badalamenti has four buildings, Judge, that  
20 he manages. He collects in rents, \$15,000 a month. He  
21 works in a bagel store, has a piece of it, I think, I am  
22 not sure where he gets paid. He has a house with a  
23 mortgage on it, his wife, she's here, two children -- two  
24 -- I mean, I hate to use this word but it's been used  
25 before, I mean to think that he would jeopardize all this

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1 to try and collect \$1,500, Judge, is just quite frankly  
2 absurd.

3 Now understand what I am saying, Judge, the  
4 government has an absolute right to proceed in this case.  
5 There's no question about that. But they don't have a  
6 right to detain him. And what they do in these cases,  
7 Judge, as I have seen in the past, although I haven't  
8 represented people in this arena for a long time, is they  
9 stuff the record with all the decisions of judges where a  
10 person has been held in detention just because of who he  
11 is and an allegation that he belongs to an organized  
12 crime family.

13 I did a little research on this case, Judge, on  
14 where they do it. I have here, I think, fifteen cases in  
15 the eastern district, United States v. Spero, United  
16 States v. John Gotti, Jr., United States v. Anastasia,  
17 United States v. Gigante, Judge Nickerson's decision,  
18 United States v. Bellomo, United States v. Orena,  
19 Judge Korman. And all these cases --

20 THE COURT: You've forgotten Peter Gotti.

21 MR. FISCHETTI: What?

22 THE COURT: You forgot United States v. Peter  
23 Gotti.

24 MR. FISCHETTI: Peter Gotti; was he released on  
25 bail? No. No, I'm saying, Judge, they have fifty cases

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1 in here where they were not released on bail. What I am  
2 saying, they don't include any of the cases here where  
3 they were released on bail. Let's take Arena, I mean if  
4 you want to go through them, he was charged with  
5 conspiracy to murder, weapons possession, and alleged to  
6 be a member of the Colombo family and the son of the  
7 alleged boss was released on bail. Okay? Judge Sifton,  
8 United States v. Vallilla (ph.), defendants alleged to be  
9 high-ranking members of the Gambino family, released on  
10 bail. United States v. Bellomo, Judge Kaplan, release on  
11 bail for the acting underboss charged with conspiracy to  
12 murder.

13 I've got case after case on that, Judge. So  
14 I'm saying you can't just take the cases that are  
15 submitted by the government and say all we have to do is  
16 throw something up in the air and say he's the boss of  
17 the family and he should be detained. He's not charged  
18 with murder. He's not charged with conspiracy to murder.  
19 He's not charged with any activity that caused injury to  
20 anybody. He's charged in the one charge that if he wins  
21 in this case, defeats the RICO -- defeats the RICO,  
22 because there's predicate acts. The only charge that he  
23 has within the statute of limitations which they could  
24 charge him with is trying to collect \$1,500. That's the  
25 charge, Judge.

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1           And I want to say one more thing, Judge, and  
2 this am saying basically as not a reason because your  
3 Honor should deny the preventive detention but how  
4 difficult it is -- I am not saying, and I say it again,  
5 but I can't defend him properly if he's incarcerated but  
6 the difficulty is really enormous. I've seen him twice.  
7 The first time I went to see him, I waited four and a  
8 half hours. He didn't come down because I found out  
9 later, there is something called a separation order. So  
10 I raised that before Judge Amon and the United States  
11 Attorney said that there was a way to avoid that. There  
12 is a separation order and what I had to do was e-mail all  
13 the other defense lawyers in the case and pick my own  
14 time, which I did last Friday with myself and my partner.  
15 Ms. Malgieri went down. Now this time we only waited two  
16 hours and nobody was down there from the indictment. And  
17 when I asked the Lieutenant, they told me it's not a  
18 separation order for only the defendants in this case,  
19 it's a separation order for others. He wasn't allowed to  
20 tell me the others. I was down there with one of the  
21 lawyers who has a defendant in this case and he told me,  
22 I don't know if it's true, that Ms. Argentieri has sent  
23 to the MCC a separation order for all people who are  
24 alleged to be members of the Bonanno family. I don't  
25 know who they are but if that's not true, I waited two

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1 hours with nobody down there.

2 Now I am not saying that would prevent me from  
3 seeing him and going over fifty consensual recordings,  
4 only one of which is his, Judge, over this period of time  
5 but there's no necessity for this. When he was allowed  
6 out on bail last time before a judge, nothing happened  
7 between the time he was allowed on bail, between the time  
8 he pled guilty, he got fifteen months. He also was on  
9 supervised release for another three years, there was no  
10 charge at all that he ever committed a crime during this  
11 period of time.

12 And I want to tell you one more thing, Judge,  
13 which troubles me about this case. In 2009, on December  
14 16, Judge, that was two years ago, Mr. Badalamenti was in  
15 a social club and the allegation is he's got an interest  
16 in that social club, a social club where individual  
17 people go down and play cards and -- your Honor's  
18 familiar with social clubs, so I see your Honor was  
19 smiling.

20 In any event, on December 16, 2009, Judge, and  
21 the estimates vary, the estimates vary between twenty and  
22 forty agents, descend on the social club wearing DEA  
23 jackets and they come into the social club and they take  
24 all the people out of the social club on the 16th and  
25 line them up out in the cold and they conduct a search.

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1 They conduct a search according to the search warrants,  
2 it's supposed to be a meeting of the Bonanno family, of  
3 BlackBerries, pagers, electronic devices, and everybody's  
4 outside and they conduct their search and as far as I  
5 know, I don't have a return on the warrant nor do I have  
6 the affidavit to the warrant which I'll get now, nothing  
7 was seized. I mean, there was no drugs. There were no  
8 weapons. There were no gambling slips, nothing.

9                   And do you know what else they did, which  
10 really surprises me, and perhaps I can get an answer to  
11 this because I haven't been able to get an answer to this  
12 from the government, they take Mr. Badalamenti who is  
13 outside, they handcuff him, they put him in a police car  
14 and they take him somewhere downtown. He doesn't know  
15 where. He says it was some kind of warehouse. It may  
16 have been DEA headquarters downtown. He's taken in the  
17 police car there and he's taken upstairs and he's  
18 photographed, printed. He's examined, asked if he wants  
19 to make any statements, which he doesn't. He's held for  
20 hours. Then he's released; never arrested. No arrest  
21 warrant, nothing. I have no idea under what section the  
22 government has a right to seize not the recording devices  
23 but seize an individual and keep him for hours.

24                   Now, mind you, this is a man who is supposed to  
25 be a high ranking member of the Bonanno family. This

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1 happens on December 16, 2009. We are now in February,  
2 Judge; no arrest occurred during that time. No arrest  
3 occurred from the time he was released in 2005 until now,  
4 seven years. The two predicate acts are twelve years ago  
5 and the one act within the statute of limitations is  
6 \$1,500.

7 Your Honor, if there were no allegations of  
8 being in the Bonanno crime family, I ask that he be ROR'd  
9 and returned. As it is now, I would put up bail from his  
10 wife, who is here to sign. He has a home that's worth  
11 \$1.3 million with about a \$300,000 mortgage. His sister  
12 Michelle is here. She has a home in Long Island,  
13 mortgage-free, that's \$600,000. His sister, Patricia  
14 Badalamenti -- Patricia Coro (ph.) actually, that's her  
15 married name; unfortunately her husband's deceased, is  
16 here. They will all sign as sureties on that. And I  
17 think I've made a showing hopefully, your Honor, that  
18 there's no reason for Mr. Badalamenti to be detained.

19 THE COURT: I want to hear from the government.

20 MS. ARGENTIERI: Just for the record, Judge,  
21 Mr. Fischetti has never asked me or any lawyer for the  
22 government about the circumstances of Mr. Badalamenti  
23 being detained; not once. So when he says that he has  
24 yet to receive an answer and he's been continually  
25 inquiring --

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1                   MR. FISCHETTI: I didn't write, I asked.

2                   MS. ARGENTIERI: -- it just -- yes, he didn't  
3 ask me and he didn't ask Mr. Frank. So, I am not sure  
4 who it is that he claims to have asked.

5                   Second of all, I am not sure what  
6 Mr. Badalamenti said to the agents in the three hours  
7 that he allegedly spent with them but I am happy to ask  
8 them and follow-up on that now that it's been raised.

9                   Judge, the third thing --

10                  MR. FISCHETTI: Excuse me, I don't mean to  
11 interrupt but it's not his sentence; I want to know why  
12 you took him into custody.

13                  MS. ARGENTIERI: Judge, the third thing is that  
14 I saw Mr. Fischetti reading from 302s that appear to have  
15 been marked with 3500 number and I believe that there  
16 were 302s turned over at one of the Persico trials and  
17 that 3500 material is subject to a protective order. So  
18 I would like to know -- I would like him to identify for  
19 me what case those materials are related to, so that we  
20 may continue to look into it as I saw him reading from  
21 them just now here today.

22                  MR. FISCHETTI: Well, I will answer that if she  
23 answers me why she took him into custody when arrested.

24                  MS. ARGENTIERI: I didn't take anyone into  
25 custody and I --

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1                   MR. FISCHETTI: You were there.

2                   MS. ARGENTIERI: I --

3                   MR. FISCHETTI: Your Honor, Ms. Argentieri,  
4 which I find really unusual, was at the scene of the  
5 search directing people what to do and directed the agent  
6 to -- let me hear from her that she wasn't there.

7                   MS. ARGENTIERI: This is a sideshow, Judge. I  
8 have --

9                   MR. FISCHETTI: Were you there?

10                  MS. ARGENTIERI: I am raising a legitimate  
11 issue with regard to the protective order --

12                  MR. FISCHETTI: I'm raising a legitimate issue,  
13 also.

14                  MS. ARGENTIERI: -- that I believe was  
15 violated.

16                  THE COURT: Well, let me just -- first of all,  
17 let's deal with the question of detention.

18                  MS. ARGENTIERI: Okay.

19                  THE COURT: And then we'll deal with the  
20 question of the 3500 material.

21                  MS. ARGENTIERI: Okay.

22                  MR. FISCHETTI: Now --

23                  MS. ARGENTIERI: With regard to bail, Judge,  
24 the government -- I'm sure you've read our submission.  
25 We believe we've met the standard to prove that both he

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1 is a risk of flight and that he's a danger to the  
2 community. Mr. --

3 THE COURT: Well, Mr. Fischetti has raised a  
4 number of issues.

5 MS. ARGENTIERI: And I am going to respond to  
6 them, Judge.

7 THE COURT: Okay.

8 MS. ARGENTIERI: The fact is that you can't  
9 just separate one extortion and say that he's charged  
10 with this one extortion. He's charged with being a  
11 member of the Bonanno family, with being a member of --  
12 with being basically the street boss of the Bonanno  
13 family. And he's charged with racketeering, Judge and  
14 that does not breakdown into any number of predicates.  
15 He's charged with three predicate acts. They are crimes  
16 of violence. The first predicate act he's charged with  
17 deals with him kicking -- directing his associates to  
18 kick a bar owner, not a mobster, not a mob associate,  
19 someone who works in these neighborhoods, out of the bar  
20 because the person didn't repay a loan to  
21 Mr. Badalamenti.

22 He is engaged in a pattern of loansharking.  
23 The loans go back to 1999. The most recent one was  
24 started in 2009. And this isn't Mr. Badalamenti had to  
25 collect \$1,500. He sent members of the Bonanno family to

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1 go collect that money from an extortion victim. The  
2 government's evidence of that crime is strong. It  
3 consists of cooperating witness testimony and a tape. It  
4 doesn't matter if it's one tape or fifty tapes; the crime  
5 is on tape. In addition --

6 THE COURT: And what does the tape say?

7 MS. ARGENTIERI: In the tape what happens,  
8 Judge, is that the cooperating witness goes into Mr.  
9 Badalamenti's social club which he frequents every day,  
10 Judge. This isn't a defendant who goes to work. We had  
11 a GPS on his car for some time. The one place that this  
12 defendant goes every day is his social club which is in  
13 Brooklyn, which is the same club that was raided in 2009.  
14 And so, the cooperating witness entered the social club.  
15 He goes to pay Mr. Badalamenti the money.  
16 Mr. Badalamenti explains to him that the money was taken  
17 off the top of money that the CW owed Nicky Santora and  
18 that if he wanted to repay the money, he could repay it  
19 to Nicky Santora.

20 And then two minutes later, Nicky Santora, who  
21 is one of his co-defendants -- this defendant's  
22 co-defendant, who is on supervised release shows up at  
23 Mr. Badalamenti's social club because this is how it  
24 works, Judge. They don't abide by the conditions of  
25 their release and Mr. Pagan -- and the cooperating

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1 witness pays him the money.

2 So it's all on tape. It's -- the evidence of  
3 this is very strong and --

4 THE COURT: So you theory is there that  
5 Mr. Badalamenti was directing the process. Is that, I  
6 mean --

7 MS. ARGENTIERI: There are a number of  
8 recordings with Bonanno family soldier Anthony Calabrese  
9 and with Bonanno -- former Bonanno family consiglieri  
10 Anthony Graziano, where they are talking about how  
11 Mr. Badalamenti sent Anthony Calabrese, a guy name "Fat  
12 Artie Tarzia (ph.) who is another Bonanno soldier, who  
13 reports to this defendant, and Vito Balsamo, to collect  
14 this debt from the cooperating witness.

15 MR. FISCHETTI: \$1,500, Judge.

16 MS. ARGENTIERI: And it was Mr. Badalamenti's  
17 loan and he extended it and the amount of money is not at  
18 issue. I mean it's -- he can keep saying \$1,500 all he  
19 wants but it doesn't make it less of a crime.

20 And, Judge, there's ample evidence of this  
21 defendant's leadership in the Bonanno family. He has  
22 been recorded by three separate associates and a member  
23 of the Colombo family in 2010 and 2011. And during those  
24 recordings, he is allowing his social club to be used for  
25 meetings at other organized crime families. He's talking

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1 about the management of the Bonanno family. He's talking  
2 about the management of the Colombo family. And he's  
3 allowing them to conduct their business in his social  
4 club.

5 In addition, in one of the -- I think this is a  
6 really important recording, Judge, that the cooperating  
7 witness meet Vito Balsamo, they're trying to set up a  
8 meeting with this defendant and Anthony Graziano and the  
9 problem is that Anthony Graziano was just recently  
10 released to a halfway house and they're trying to figure  
11 out sort of where this meeting is going to take place.

12 And so Vito Balsamo is brokering this with the  
13 witness and he says, "Vinnie said we could do it any day.  
14 He said we could do it any time providing Anthony's  
15 comfortable and Anthony's safe." And they set it up at a  
16 pre-arranged meeting location and they come up with a  
17 code to use on the phone.

18 So here is the defendant aware that Anthony  
19 Graziano is not supposed to be meeting with members and  
20 associate of organized crime, aware that he's not  
21 supposed to be associating, let alone committing more  
22 crimes. And by the way, Judge, this is a recording in  
23 late 2011. And someone on his behalf is setting up pre-  
24 arranged code words, pre-arranged meeting times. He's  
25 like if we're going to call it off, I'll call you on the

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1 phone and I'll say X. Why? To avoid law enforcement  
2 surveillance. This is a sophisticated defendant, Judge.

3 And it's not that the government's simply  
4 throwing it out there, that he's on the ruling panel or  
5 that he's a street boss. We have tapes and witnesses who  
6 are going to testify to that, multiple ones, who are  
7 going to testify about his position in the Bonanno  
8 family.

9 In 2002, Judge, he was a newly inducted member.  
10 He wasn't -- he didn't have the position that he has now.  
11 And these cases that we cited make clear that the danger  
12 of having someone in his position out on the street, even  
13 on a bracelet, even locked in his house, Judge, are that  
14 people will pass messages on his behalf because these are  
15 defendants that know how to do that. And that the danger  
16 to the community is that they will continue to commit  
17 crimes on the enterprise's behalf; collecting on his  
18 loanshark book. I mean there's going to be testimony for  
19 the last ten years that he's been a loanshark.  
20 Collecting --

21 THE COURT: Beyond what's charged in the  
22 indictment?

23 MS. ARGENTIERI: Are there other people who  
24 will say that he supports businesses and that he collects  
25 money from people? Yes.

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1                   MR. FISCHETTI: How do I defend against that in  
2 an argument? How do I do that?

3                   MS. ARGENTIERI: And we're entitled to proceed  
4 by proffer, Judge. In addition --

5                   MR. FISCHETTI: What's the proffer? You saying  
6 it?

7                   MS. ARGENTIERI: I --

8                   MR. FRANK: The proffer is that there's  
9 extensive cooperate --

10                  MR. FISCHETTI: Excuse me, I am talking to her.

11                  MR. FRANK: And I am responding to you.

12                  MR. FISCHETTI: Good. And I'll respond to you.

13                  MR. FRANK: The proffer is that there's  
14 extensive cooperating witness testimony, Judge, from  
15 multiple cooperating witnesses who will testify that this  
16 defendant is the acting street boss of the Bonanno crime  
17 family. This is a different situation from 2002 when the  
18 defendant was a member of the Bonanno crime family.

19                  Over the last decade, he has ascended the ranks  
20 to the point where he is now the highest ranking Bonanno  
21 member, not incarcerated, at the time of his arrest. If  
22 he is willing to send three members and associates of the  
23 Bonanno crime family to extort a victim over a \$1,500  
24 debt, Judge, what is he going to do when he faces five or  
25 six years in prison? That is the danger to the community

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1 that Ms. Argentieri's been talking about.

2 THE COURT: So the concern is that there may be  
3 witness tampering; is that what you're suggesting?

4 MR. FRANK: The concern is that there may be  
5 witness tampering. The concern is that this defendant  
6 who is a recidivist, who was incarcerated for fifteen  
7 months for extortion in the mid-2000, then came out of  
8 prison and resumed extorting witnesses again, will simply  
9 resume the activities that he's previously engaged in.

10 These types of crimes, these racketeering  
11 crimes, the extortion crimes, don't just stop. They  
12 continue. The enterprise is continuing and he's its  
13 highest ranking member, Judge. So he has all of those  
14 members and associates at his disposal, both to engage in  
15 witness tampering and to continue to engage in the crimes  
16 that he's been engaging in for the past decade.

17 THE COURT: Are the witnesses going to be  
18 testifying that he might not have directly been involved  
19 in the specific extortion but that he was ordering others  
20 to do it? Or is it just what's in the indictment, the  
21 four corners of the indictment?

22 MR. FRANK: Well, that's exactly what  
23 Ms. Argentieri was just talking about, that he both  
24 personally extended loans and collected on those loans  
25 and he also directed other members and associates of the

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1 Bonanno crime family to do that. And that's on tape,  
2 Judge.

3 THE COURT: And those actions took place  
4 sometime between the time that he was released from his  
5 last incarceration period to date?

6 MR. FRANK: That's correct.

7 MS. ARGENTIERI: Yes.

8 MR. FISCHETTI: Judge, he's talking about him  
9 being in this --

10 MS. ARGENTIERI: If I could just make one more  
11 point. I'm sorry.

12 MR. FISCHETTI: Of course.

13 THE COURT: Sure.

14 MS. ARGENTIERI: I just want to finish  
15 responding.

16 MR. FISCHETTI: Of course.

17 MS. ARGENTIERI: You know, Mr. Fischetti just  
18 took the position that this was a complex case. We  
19 argued to Judge Amon that it was a complex case and  
20 Mr. Fischetti said he didn't think it was a complex case.

21 MR. FISCHETTI: I still don't.

22 MS. ARGENTIERI: So he really can't have -- he  
23 can't have it both ways. So if the notion that it is a  
24 complex case is what should keep Mr. Badalamenti in jail,  
25 I withdrew my letter, Judge, and he argued that it was

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1 not a complex case which I believe that we'll be  
2 proceeding to trial shortly.

3 MR. FISCHETTI: I hope so.

4 MS. ARGENTIERI: So therefore, I don't think  
5 that that is a valid argument, Judge, and I don't  
6 understand that point. I don't think it's a valid point.

7 MR. FISCHETTI: I'll explain it. I want to go  
8 to trial.

9 THE COURT: Wait, let me just make sure she's  
10 done.

11 MS. ARGENTIERI: The one other thing, Judge, is  
12 that we also believe that Mr. Badalamenti represents a  
13 risk of flight. This hasn't gotten much -- he has the  
14 resources to flee certainly and when he learned -- when  
15 he suspected that one of our recent cooperators was  
16 cooperating, he told another cooperating witness that he  
17 was going to hide out in Pennsylvania for some period of  
18 time. And I believe that he did, Judge. So, we believe  
19 that he also is potentially a risk of flight. He has the  
20 resources and there would be nothing stopping him.

21 MR. FISCHETTI: Judge, so much of what they say  
22 is so completely untrue that I am shocked.

23 Mr. Badalamenti knew he was going to get arrested in this  
24 case. He called me and told me he was going to be  
25 arrested, wanted to know where I was in case he did get

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1 arrested and he was arrested.

2 He's never gone, he's never fled, he's never  
3 gone anywhere. And to have them say that he engaged in  
4 this criminal conduct of ten years, I'm telling you I  
5 don't know where US attorneys come from today. I just --

6 MR. FRANK: Judge, I --

7 MR. FISCHETTI: I haven't finished.

8 MR. FRANK: I've just been listening to  
9 Mr. Fischetti --

10 MR. FISCHETTI: Counsel, I haven't finished.  
11 Counsel, I haven't finished.

12 MR. FRANK: I've just been listening to  
13 Mr. Fischetti talk about the weakness of the evidence --

14 MR. FISCHETTI: Judge, may I listen -- may I  
15 finish?

16 MR. FRANK: -- in the case and now apparently  
17 his client --

18 MR. FISCHETTI: May I finish? May I finish?

19 MR. FRANK: -- knew that he (indiscernible)  
20 time he was about to be arrested.

21 THE COURT: Hold on.

22 MR. FISCHETTI: May I finish.

23 THE COURT: Let mr. Fischetti finish and then  
24 I'll hear you.

25 MR. FISCHETTI: I'll finish and then hear from

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1 him. I've got 302s here that she wants --

2 MS. ARGENTIERI: I just --

3 MR. FISCHETTI: I'm not finished. Talking  
4 about the exact crimes that he was supposed to have  
5 committed. They're dated 2004.

6 THE COURT: And where did you get those?

7 MR. FISCHETTI: I got them from an attorney,  
8 Judge, who gave them to me.

9 MR. FRANK: Violation of a protective order.

10 THE COURT: Weren't they supposed to be  
11 returned to the government --

12 MR. FISCHETTI: I didn't get a protective order  
13 on this.

14 THE COURT: No, at the conclusion of the --  
15 yes, I know, but the person who gave them to you --

16 MR. FISCHETTI: They told me it wasn't governed  
17 by a protective order and they sent them to me.

18 MR. FRANK: You're an officer of the court,  
19 Mr. Fischetti.

20 MR. FISCHETTI: What do you mean I am an  
21 officer of the court? I don't know that these are  
22 covered by a protective order.

23 MS. ARGENTIERI: Could be --

24 MR. FISCHETTI: There's nothing on them that  
25 says that.

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1 MS. ARGENTIERI: It could be very simply  
2 resolved by you telling us the case number.

3 MR. FISCHETTI: I will tell you the case  
4 number.

5 MS. ARGENTIERI: Okay, what is it?

6 MR. FISCHETTI: Let me finish. Well, let me  
7 finish the argument.

8 THE COURT: Okay.

9 MR. FISCHETTI: Judge, the argument is -- it  
10 doesn't matter how I got them, when I got them. I'm not  
11 barred from getting this. You'll read these, Judge, this  
12 is 2004 saying exactly what they're saying about these  
13 crimes that they did nothing about it.

14 THE COURT: Well, but --

15 MR. FISCHETTI: For eight years.

16 THE COURT: But some of what counsel was saying  
17 related to crimes in 2011, if I understood --

18 MR. FISCHETTI: One crime, Judge.

19 THE COURT: Well --

20 MR. FISCHETTI: \$1,500.

21 THE COURT: No, no, beyond that one.

22 MR. FISCHETTI: That's the only one.

23 THE COURT: I believe that counsel was saying  
24 there were more.

25 MR. FISCHETTI: Judge, when we --

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1                   THE COURT: If I am wrong, correct me.

2                   MR. FISCHETTI: On what basis, Judge? I have  
3 nothing on that. There's nothing in the detention memo  
4 on that. There's nothing here except they're saying it.  
5 What if they say he committed conspiracy to murder, how  
6 am I supposed to defend against that? Where does it say  
7 that? This is ridiculous.

8                   MR. FRANK: Judge, he was incarcerated after  
9 those crimes. He was subsequently released and then he  
10 resumed committing the additional extortionate extension  
11 of collection that's charged in the indictment.

12                  MR. FISCHETTI: Okay.

13                  THE COURT: But am I wrong --

14                  MR. FISCHETTI: Okay, that's 2004. He was  
15 released in 2005. He was released in 2005. This is  
16 2004, eight years ago.

17                  MS. ARGENTIERI: I really appreciate it if we  
18 could just tone this down a little bit.

19                  MR. FISCHETTI: Certainly.

20                  MS. ARGENTIERI: Judge, we do have additional  
21 source information that Mr. Badalamenti was a loanshark  
22 in the years after that 302 and that he sought to collect  
23 on debts. We do have that information in addition to the  
24 charged crime. So that's not charged right now, Judge.

25                  MR. FISCHETTI: How am I supposed to defend

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1 against that?

2 MR. FRANK: Just to respond, Judge, to the  
3 point that we didn't do anything about it --

4 MR. FISCHETTI: How am I supposed to defend  
5 against that?

6 THE COURT: The problem, Mr. Fischetti, is that  
7 the courts have said they could proceed by proffer.  
8 You're stuck. I can't help you out now.

9 MR. FISCHETTI: Well, no, there's a difference  
10 on proffer. Do they have statements? Do they have 302s?  
11 Do they want to put an agent on? They just say it and  
12 that's their proffer? I have to respect that? This is a  
13 litigation, Judge, on both --

14 THE COURT: Well, do you have the --

15 MR. FISCHETTI: -- sides.

16 THE COURT: -- agent who can testify?

17 MS. ARGENTIERI: We don't have an agent  
18 available right now today, Judge.

19 THE COURT: Well, we can put it over for a  
20 hearing.

21 MS. ARGENTIERI: Okay.

22 MR. FISCHETTI: I don't want to put it over for  
23 a -- I want him out today.

24 THE COURT: Well he's not going to get released  
25 today, Mr. Fischetti. There's --

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1                   MR. FISCHETTI: Well, I think that's wrong,  
2 Judge, absolutely wrong.

3                   THE COURT: Well --

4                   MR. FISCHETTI: So make your ruling now, Judge.

5                   THE COURT: We disagree.

6                   MR. FISCHETTI: You want to keep him detained,  
7 make it and I'll take my appeal.

8                   THE COURT: You don't want to have a hearing?

9                   MR. FISCHETTI: Yes, I want a hearing, a real  
10 hearing where I could cross-examine somebody. If you're  
11 not going to give me that, detain him. I don't think  
12 there's any reason why he should not be released today on  
13 the basis of what's in the indictment, what's in the  
14 detention memo and based upon what I have here on a  
15 \$1,500 loan when he was out. You want to detain him?  
16 Detain hi.

17                   THE COURT: All right. Well, I'm reserving  
18 decision and you'll get my decision in writing.

19                   MR. FISCHETTI: Thank you, Judge.

20                   MS. ARGENTIERI: Actually, can I have the  
21 number on those 302s before he walks away, Judge? I'd  
22 really like to deal with that.

23                   MR. FISCHETTI: And I'd like to have the tapes  
24 if there is going to be a hearing on what they rely upon.

25                   MS. ARGENTIERI: I just want the number off the

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1 302s, Judge.

2 THE COURT: Well, you said no hearing.

3 MR. FISCHETTI: No.

4 THE COURT: So I am going to just decide.

5 MR. FISCHETTI: You decide. You decide. Could  
6 you decide now, Judge?

7 THE COURT: No, I am not deciding now.

8 MR. FISCHETTI: All right. Can I bring up the  
9 sureties, so at least you see what we have here?

10 THE COURT: I take your word for it.

11 MR. FISCHETTI: Oh, good. Thank you, Judge.

12 It's very nice that you take my word for that.

13 THE COURT: No need, Mr. Fischetti, to be, you  
14 know, sarcastic with me.

15 MR. FISCHETTI: I'm upset, Judge.

16 THE COURT: I understand that.

17 MR. FISCHETTI: I have a client to represent.

18 THE COURT: You and I go way back and I don't  
19 need this. I don't deserve it and I don't need it.

20 MR. FISCHETTI: Fine.

21 THE COURT: I have given you an opportunity to  
22 be heard. I'm going to consider your arguments  
23 carefully. I'm going to go back and look at some of the  
24 cases that you have cited but I really do not appreciate  
25 the sarcasm and you know better.

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1                   MR. FISCHETTI: Fine. Let me give you the rest  
2 of the cases, Judge, since you're going to look at cases  
3 and the cites.

4                   THE COURT: If you've got them all there on a  
5 piece of paper, I'll take it.

6                   MR. FISCHETTI: Thank you. I'll submit them to  
7 you.

8                   THE COURT: And can we have the docket number  
9 of the case that you're referring to?

10                  MS. ARGENTIERI: It's under the 3500 number on  
11 the top right-hand corner.

12                  MR. FISCHETTI: 4-cr -- I'm finding it  
13 difficult to read. 4-cr --

14                  MS. ARGENTIERI: 04-cr-911-SJ. And can I just  
15 ask, Mr. Fischetti, if he received those 302s from a  
16 lawyer on that case?

17                  MR. FISCHETTI: May I ask the government why  
18 they held my client in custody?

19                  MS. ARGENTIERI: Judge?

20                  MR. FISCHETTI: I'm not responding to her if  
21 she won't respond to me.

22                  THE COURT: Well that's part of the pretrial  
23 discovery which is kind of beyond my scope here.

24                  MR. FISCHETTI: Fine. I'll ask Judge Amon.

25                  THE COURT: Okay.

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1                   MR. FISCHETTI: Thank you, your Honor. May we  
2 withdraw?

3                   THE COURT: Yes, you may.

4                   (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 13th day of February, 2012.

  
Linda Ferrara

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